In the High Court of Punjab and Haryana at Chandigarh

CWP No.8942 of 2006
Date of decision: November 19, 2007

M/s Bharat Sanitaryware (P) Ltd.

---Petitioner

Vs.

Appellate Authority for Industrial and Financial Reconstruction

---Respondent

Coram: **HON'BLE MR. JUSTICE M.M.KUMAR**
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr.A.K.Chopra, Senior Advocate with
Mr. Rajneesh Chauhan, Advocate,
for the petitioner.
Mr.Nitin Kumar, Advocate,
for respondent No. 3.

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M.M.KUMAR, J.

On 3.10.2003 the Board for Industrial and Financial Reconstruction (for brevity 'the BIFR') passed an order (P-10) issuing various directions to the Punjab National Bank(Operating Agency). The directions also included the issuance of advertisement by 20.10.2003 for change in management of the company namely, M/s Bharat Sanitaryware (P) Limited-petitioner. The aforementioned direction reads as under:-

> "PNB (OA) would issue an advertisement by 20.10.2003 for change in management of the company inviting offers for take over/leasing/amalgamation/merger for rehabilitation, with or without one time settlement (OTS) of the dues of FIs/banks, including measures listed under

> Sections 18(2)(i) and 18(11) of the Act, giving 60 days' time for submission of offers. The management of the company shall provide all necessary facilities for visiting the company/factories to the intending bidders/incoming promoters or co-promoters. The OA and the company shall also share with them necessary information on the latest audited balance sheet of the company as well as its assets and liabilities. The present promoters are also permitted to submit their fully tied up offer, with or without a co-promoter, in response to the advertisement to be issued by the OA within the time limits prescribed, if they so desire. All offers should be accompanied by an interest bearing 'no lien' deposit of Rs. 30 lacs to be made with the PNB for a period of 4 months. In the absence of such deposits (which would be refunded to the unsuccessful bidders along with interest), the bids would not be considered. All bids should also contain proof of concrete sources of funds to be brought in to support the rehabilitation proposals."

The petitioner challenged the order of the BIFR before the Appellate Authority for Industrial and Financial Reconstruction (for brevity ' the AAIFR'). The AAIFR entertained the appeal and issued various interlocutory orders. On 9.8.2005, operation of the order dated 3.10.2003, passed by the BIFR, was stayed after notices were served. On 18.4.2006, after hearing the matter another interlocutory order was passed directing the petitioner-appellant to deposit a sum of Rs. 30Lacs in 'Non-Lien Account'

with Punjab National Bank (Operating Agency). Further direction was given to the operating agency to examine one time settlement and fix a meeting of all secure creditors on 31.5.2006 and the matter was adjourned to 8.6.2006.

It is at the aforementioned stage that the petitioner has approached this Court challenging the direction of depositing Rs. 30 lacs as the total amount of rehabilitation was Rs. 42.10 lacs as per the proposal. On 30.5.2006, the Motion Bench while hearing the matter, issued direction to the petitioner to deposit Rs. 10 lacs instead of Rs. 30 lacs, as per direction issued by the AAIFR, and stayed the payment of rest of the amount till further orders. A period of one month was granted to pay the aforementioned amount in 'Non-Lien Account' with Punjab National Bank (Operating Agency).

Notice of the petition was issued and respondent No. 3-Punjab National Bank (Operating Agency) has put in appearance and the claim made by respondent No. 3-Punjab Nation Bank (Operating Agency) is that their charges have not been paid.

We have heard learned counsel for the parties and have perused various orders passed by the BIFR and AAIFR. The process of rehabilitation of the petitioner company is going on before the aforementioned authorities and dispute with regard to depositing the amount of Rs. 42.10. lacs or any other amount is also pending consideration at the proposal stage. At this stage, we do not wish to express any opinion on the merits of the controversy lest it prejudices the rights of the parties. The Motion Bench has considered it appropriate to direct the petitioner to deposit Rs. 10 lacs instead of Rs. 30 lacs. The discretion so exercised by

the Motion Bench does not call for any variation as no argument has been addressed for its alteration. Therefore, order dated 30.5.2006 passed by the motion Bench is made absolute. The AAIFR shall accept the amount of Rs. 10 lacs and to that extent the order dated 18.4.2006 passed by the AAIFR is modified. The petition stands disposed of accordingly.

The Punjab National Bank (Operating Agency) shall be at liberty to raise all its claims before the appropriate authority i.e. before the BIFR or the AAIFR.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

NOVEMBER 19, 2007
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